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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/633,422	08/07/2000	Mark James Kline	8194	3289

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EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT PAPER NUMBER

3761

DATE MAILED: 03/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

D-1

<b>Office Action Summary</b>	<b>Application No.</b> 09/633,422	<b>Applicant(s)</b> KLINE ET AL	
	<b>Examiner</b> Dennis Ruhl	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____   |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other:  |

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 1, applicant has recited the limitation of "peel resistance". The examiner is not clear as to what this refers to. From a reading of the test method disclosed in the specification, the end result of the test method is a "Peak Load" and not a peel resistance. Is the peel resistance in the claims actually the same value or characteristic as the Peak load? The examiner also notes that the claim does not actually require the test from the specification so the examiner takes the position that it is not clear what the term "peel resistance" refers to. How is peel resistance determined? Clarification and/or correction is required.

With respect to claim 2 there is no antecedent basis for "the first direction". What first direction? None has been previously claimed.

With respect to claims 3,4,5,10, what is meant by a laterally inboard edge? Inboard of what? How can the lateral edges of the fastener have one of themselves inboard of the other one? Wouldn't they be inboard of the edge of the article to the same extent? Is the portion of the fastener that extends laterally define one or both of the lateral edges? The examiner understands how there can be a longitudinally inboard edge but does not understand how there can be a laterally inboard edge. The scope of these claims is not clear to the examiner.

With respect to claim 5, there is no antecedent basis for "the effective longitudinal dimension". What is meant by the "effective longitudinal dimension"? Effective to achieve what result?

With respect to claims 6,7, the examiner does not understand what is meant by "selectively enhanced" and "selectively damaged". What does this mean? In article claims only the end structure of the article is considered, so reciting that the fastening elements are enhanced/damaged in some unknown manner is more like a method limitation than a structural limitation directed to the end structure that the article will have. The examiner suggests that applicant recite the manner in which the fasteners are enhanced or damaged (end structure).

With respect to claim 8, what is "inherent directionality"? If this is an inherent characteristic of the already claimed fastener then how does this claim further limit the subject matter of claim 1? What does this limitation mean?

With respect to claim 11, the examiner is somewhat confused. The longitudinally outboard edge of the fastener element is free from attachment from the article so why is applicant claiming that a portion is not attached to the article? Does applicant really mean the outboard edge?

With respect to claim 12, how can the peel resistance be both greater than or equal to 1300 and be greater than or equal to 1600. If the peel resistance is greater than or equal to 1600 it cannot be less than 1600, so it cannot be at a value between 1300-1599, which is included in the scope of this claim. The same rationale follows for

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claim 13. The examiner thinks the claim language should be recited as "selected from one of the group of ....".

With respect to claim 15, how can the article of the claims (singular so not a plurality of articles) be a diaper and a sanitary napkin at the same time? Can one article to two articles at the same time? This seems improper.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3,5-8,11-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Scripps (4846815).

With respect to claims 1-3,5-8,11-16, Scripps discloses an absorbent article that has a fastening system. The 1<sup>st</sup> fastener is 54 and the 2<sup>nd</sup> fastener is 53. See column 8, line 60-68 for a disclosure of what the peel resistance of the fastener system is in the primary direction of load bearing. At least about 750 grams includes the claimed values. Because the 1<sup>st</sup> fastener of Scripps has the shape disclosed by applicant in figure 3 of the instant specification, the fastener system of Scripps will have a peel resistance in a direction other than that of the direction of primary load bearing as claimed. If applicant can accomplish the increased peel resistance by having a fastener in the shape of figure 3 then Scripps will also have this characteristic. Scripps discloses an absorbent member 14. The first fastener inherently has a hinge, which is the point where the fastener can pivot with respect to its attachment point to the article.

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With respect to claim 18, reciting that the article is pre-fastened does not result in a different article. This is just a state of use for the article and does not define any further structure to the article. Applicant could also claim that the article has been rolled into a ball, but that would not change the fact that the article is still the same article. Scripps satisfies the claimed limitation.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The numerous patents cited by the examiner are cited to show the various shapes for fasteners found in the prior art and are references considered by the examiner to be usable in a prior art rejection for the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

  
**DENNIS RUHL**  
**PRIMARY EXAMINER**